



US Army Corps
of Engineers
St Paul District

APPLICANT: J&S Partnership/
Stauber
Properties, LLP

Public Notice

ISSUED: 10 February 2004
EXPIRES: 11 March 2004

REFER TO: 03-02849-KDZ

SECTION: 404 - Clean Water Act

1. APPLICATION FOR PERMIT TO discharge fill material into 2.86 acres of wetlands adjacent to Keene Creek for the construction of a 45,000 square foot commercial building with 227 parking spaces and ingress and egress from Maple Grove Road in Hermantown, Minnesota.

2. SPECIFIC INFORMATION.

APPLICANT'S ADDRESS: 4431 West Michigan Street
Duluth, MN 55816-0006
(218) 628-0202

AGENT: Environmental Troubleshooters, Inc.
3825 Grand Avenue
Duluth, MN 55807
(218) 722-6013

PROJECT LOCATION: The project site is located in the NW 1/4, NE 1/4 of Section 24, T. 50N., R. 15W., St. Louis County, Minnesota. The approximate UTM coordinates are Zone 15, North 5183440, East 562440.

DESCRIPTION OF PROJECT: J & S Stauber Properties is proposing to construct a new commercial building in Hermantown, Minnesota. The proposed development includes a 45,000 square foot commercial building, 227 parking spaces, and to provide access onto Maple Grove Road. The subject property is 20 acres in size and consists of approximately 70% forested and scrub/shrub (type 6 and 7) wetland. The northern boundary borders Maple Grove Road and the eastern property boundary borders a current Slumberland retail business. The western and southern boundaries border vacant, wooded lots.

QUANTITY, TYPE, AND AREA OF FILL: The proposed project would require the discharge of fill material into approximately 124,582 square feet (2.86 acres) of scrub/shrub and wooded wetlands adjacent to Keene Creek, a DNR designated trout stream.

VEGETATION IN AFFECTED AREA: The predominant vegetation in the scrub/shrub wetland is tag alder, marsh marigold, and reed canary grass. The wooded wetland is predominately black ash, maple, and typically associated species.

CEMVP-CO-R (03-02849-TWP)

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SOURCE OF FILL MATERIAL: Fill material would be obtained from existing commercial sources in the area.

SURROUNDING LAND USE: The project area is located near commercial and residential areas of Hermantown, Minnesota.

DESCRIPTION OF STRUCTURE: The proposed development includes a 45,000 square foot commercial building, 227 parking spaces, and ingress and egress from Maple Grove Road.

THE FOLLOWING POTENTIALLY TOXIC MATERIALS COULD BE USED AT THE PROJECT SITE: The proposed project would not involve the use of any potentially toxic materials.

THE FOLLOWING PRECAUTIONS TO PROTECT WATER QUALITY HAVE BEEN DESCRIBED BY THE APPLICANT: Standard construction best management practices would be followed. The project design incorporates a two-cell storm water catch basin on the east side of the subject site to provide primary treatment of storm water before it would be released into wetlands adjacent to Keene Creek.

MITIGATION AND MINIMIZATION: As compensation for the wetlands which would be lost due to this project, the applicant is proposing to purchase 2.86 acres of new wetland credits from an approved wetland bank. The remaining property will be voluntarily put into a conservation easement and consists of 1.0 acre of upland and approximately 14.15 acres of wetland. The wetlands are part of the headwaters to Keene Creek. The applicant has also minimized wetland impacts by utilizing all the upland along Maple Grove Road and scaling back their original building size.

The applicant states that two other potential project sites on Maple Grove Road were evaluated. These two properties were field reviewed and delineated. It was concluded that more wetland impacts would result by locating the proposed project on the alternative Maple Grove sites.

3. REPLIES/COMMENTS.

Interested parties are invited to submit to this office written facts, arguments, or objections within 30 days of the date of this notice. These statements should bear upon the suitability of the location and the adequacy of the project and should, if appropriate, suggest any changes believed to be desirable. Comments received may be forwarded to the applicant.

Replies may be addressed to Regulatory Branch, St. Paul District, Corps of Engineers, 1554 Highway 2, Suite 2, Two Harbors, MN 55616.

Or, IF YOU HAVE QUESTIONS ABOUT THE PROJECT, call Kyle Zibung at the Two Harbors office of the Corps, telephone number (218) 834-6630.

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4. FEDERALLY-LISTED THREATENED OR ENDANGERED WILDLIFE OR PLANTS OR THEIR CRITICAL HABITAT.

None were identified by the applicant or are known to exist in the permit area. However, St. Louis County is within the known or historic range of the following Federally-listed threatened species:

<u>Species</u>	<u>Habitat</u>
Bald eagle (<i>Haliaeetus leucocophalus</i>)(T)	Breeding
Gray wolf (<i>Canis lupus</i>)(T)	Northern forested areas (a primary range county)
Canadian Lynx (<i>Lynx canadensis</i>)(T)	Northern forested areas (a primary range county)

This application is being coordinated with the U.S. Fish and Wildlife Service. Any comments it may have concerning Federally-listed threatened or endangered wildlife or plants or their critical habitat will be considered in our final assessment of the described work.

5. JURISDICTION.

This project comes under the regulatory jurisdiction of the Corps of Engineers because it involves wetlands adjacent to Keene Creek, which is a tributary to the St. Louis River, a navigable water of the United States.

REGULATORY AUTHORITY: This application will be reviewed according to the provisions of Section 404 of the Clean Water Act. Therefore, our public interest review will consider the guidelines set forth under Section 404(b) of the Clean Water Act (40 Code of Federal Regulations 230).

THE APPLICANT HAS STATED THAT THE FOLLOWING STATE, COUNTY, AND/OR LOCAL PERMITS HAVE BEEN APPLIED FOR: The project application was submitted to The City of Hermantown, MN for Minnesota Wetland Conservation Act (WCA) authorization, and also the Minnesota Pollution Control Agency (MPCA) for Section 401 Water Quality Certification and NPDES permits.

6. STATE SECTION 401 WATER QUALITY CERTIFICATION.

Valid Section 404 permits cannot be issued for any activity unless state water quality certification for the activity is granted or waived pursuant to Section 401 of the Clean Water Act. The state Section 401 authority in Minnesota is the Minnesota Pollution Control Agency (MPCA). The St. Paul District has provided this public notice and a copy of the applicant's Section 404 permit application form to the MPCA. If MPCA needs any additional information in order for the Section 401 application to be considered complete by MPCA, the MPCA

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has indicated that it will request such information from the applicant. It is the permit applicant's responsibility to ensure that the MPCA has received a valid, complete application for state Section 401 certification and to obtain a final Section 401 action from the MPCA.

The MPCA has indicated that this public notice serves as its public notice of the application for Section 401 water quality certification under Minnesota Rules Part 7001. The MPCA has also indicated that the Section 401 process shall begin to commence upon the issuance date of this public notice unless the MPCA notifies both the St. Paul District and the permit applicant to the contrary, in writing, before the expiration date of this public notice.

The MPCA has eliminated the staffing resources for the Section 401 certification program due to budgetary limitations. Due to staff reductions, MPCA is intending to waive many section 401 certification applications with limited exceptions but the MPCA reserves the right and authority to proceed differently if extreme or unique circumstances merit a different approach. In many cases, the waiver of 401 certification means that the MPCA has not reviewed federally permitted projects in detail for conformance with state water quality standards nor has the MPCA made a determination of the proposal's compliance with state water quality standards. This waiver action, however, will not exempt the applicant from the responsibility of complying with all applicable water quality standards and requirements as contained in Minn. R. ch. 7050 and all other applicable state rules regarding water quality. The applicant will need to make a self-determination of water quality compliance of their proposal. In the event of water quality violations caused by the applicant's project, enforcement action may be taken by the MPCA.

Any comments relative to MPCA's intention to waive Section 401 Certification for the activity proposed in this public notice may be sent to:

Minnesota Pollution Control Agency
Regional Environmental Management Division
Attention 401 Certification
520 Lafayette Road North
St. Paul, Minnesota 55155-4194

7. HISTORICAL/ARCHAEOLOGICAL.

This public notice is being sent to the National Park Service, the State Archaeologist, and the State Historic Preservation Officer to determine if there are known cultural resources which may be affected by the described work. Any unknown archaeological, scientific, or historical data could be lost or destroyed by the work described in the permit application. However, the latest version of the National Register of Historic Places has been consulted and no listed properties (known to be eligible for inclusion, or included in the Register) are located in the project area.

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8. PUBLIC HEARING REQUESTS.

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearings shall state, in detail, the reasons for holding a public hearing. A request may be denied if substantive reasons for holding a hearing are not provided or if there is otherwise no valid interest to be served.

9. PUBLIC INTEREST REVIEW.

The decision whether to issue a permit will be based on an evaluation of the probable impact, including cumulative impacts, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered, including the cumulative effects. Among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production and, in general, the needs and welfare of the people. Environmental and other documents will be available for review in the St. Paul District Office.

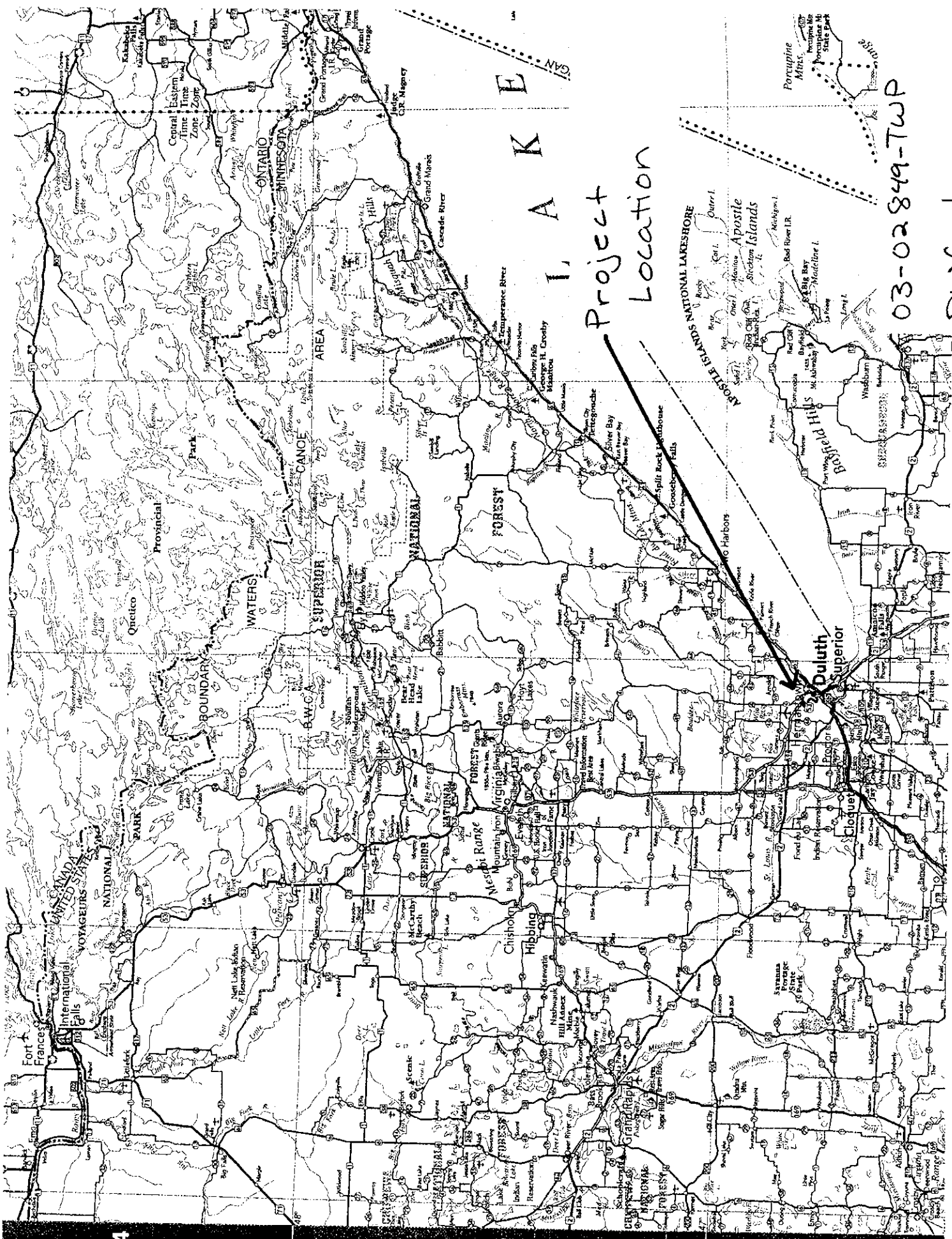
The Corps of Engineers is soliciting comments from the public; Federal, State, and local agencies and officials; Indian tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition, or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.



Juliett Denton
Chief, Out-State Minnesota Section

Enclosures

NOTICE TO EDITORS: This public notice is provided as background information and is not a request or contract for publication.

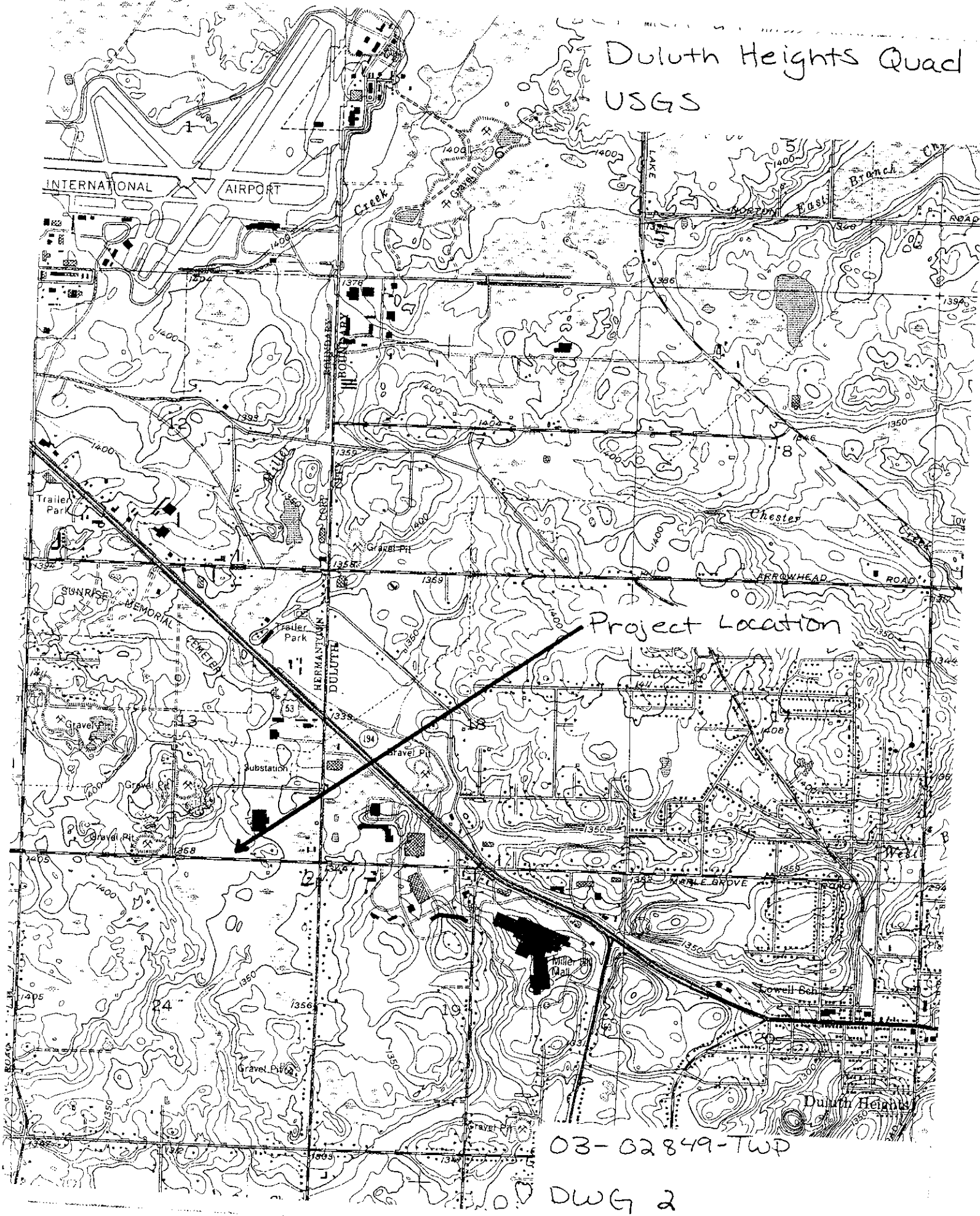


Project Location

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DWG 1

Duluth Heights Quad
USGS

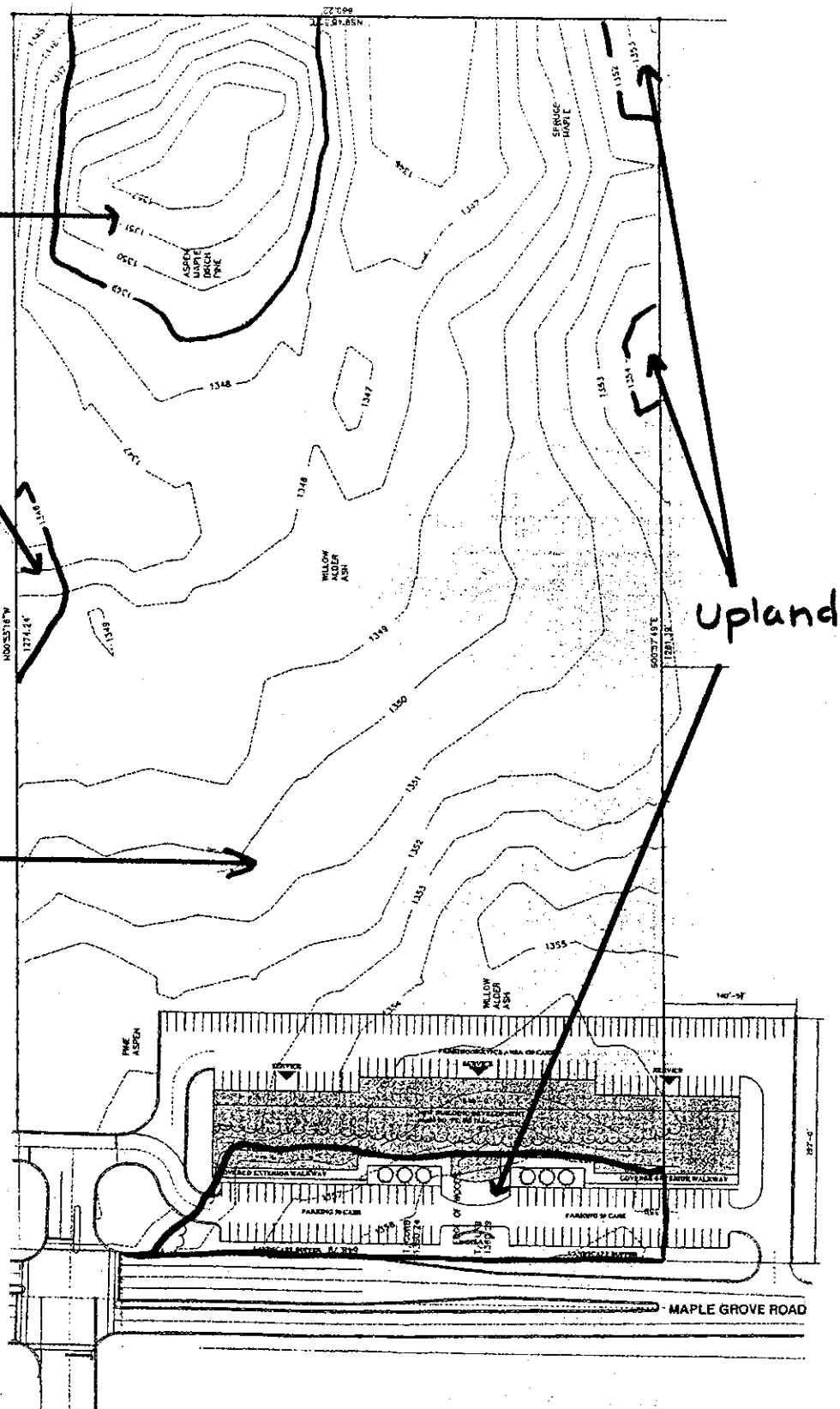
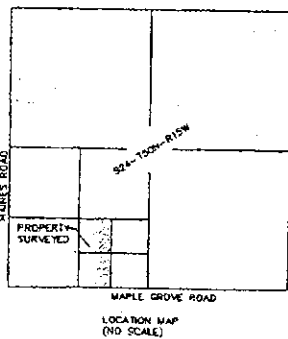


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DWG 2

Upland Areas
1.0 acres

Conservation
Easement
14.15 acres
Wetland



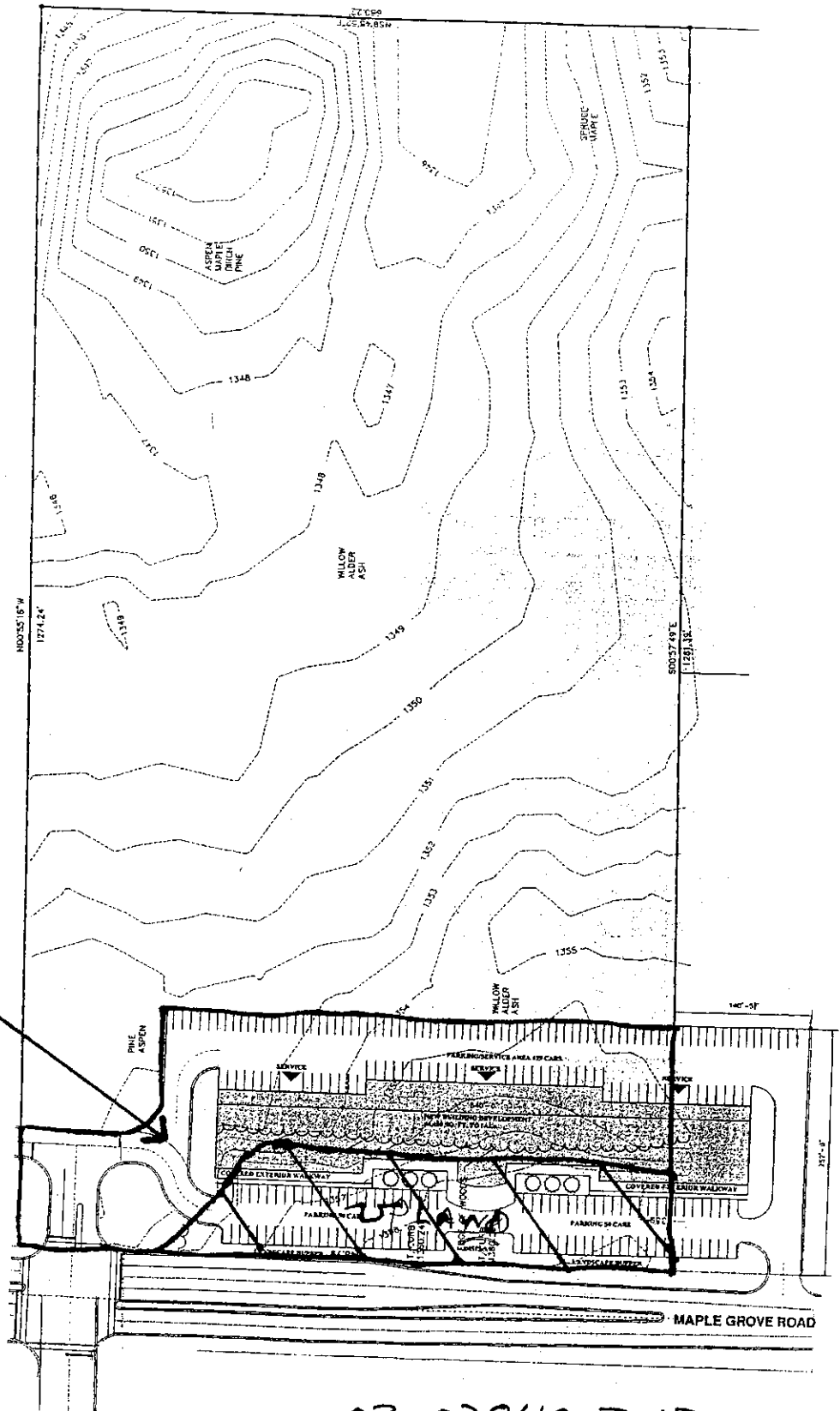
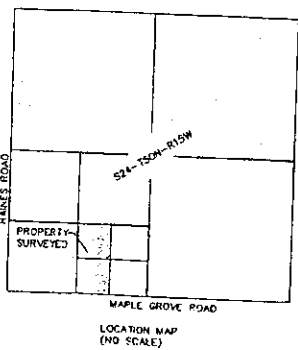
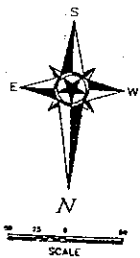
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DWG 3

Proposed Site Plan

MINIMUM PARKING REQUIRED
(5) PARKING SPACES PER 100 SQ. FT. OF BUILDING AREA
(4) 4000 - 32134 OR 23) PARKING SPACES MINIMUM
77% TOTAL PARKING SPACES SHOWN

Proposed Fill



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DWG 4

Proposed Site Plan

MINIMUM PARKING REQUIRED
 11% PARKING SPACE PER 100 SQ. FT. OF BUILDING AREA
 44,450 SQ. FT. = 222.25 OR 223 PARKING SPACES MINIMUM
 223 TOTAL PARKING SPACES SHOWN

DEPARTMENT OF THE ARMY
St. Paul District, Corps of Engineers
Army Corps of Engineers Centre
190 Fifth Street East
St. Paul, Minnesota 55101-1638

OFFICIAL BUSINESS
REGULATORY BRANCH
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